

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LUTHER PETERSON,
Petitioner,

No. C 11-2375 SI (pr)

**ORDER FOR AMENDMENT TO
PETITION**

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

Luther Peterson filed this action under 28 U.S.C. § 2254 to challenge his state court conviction. There is a threshold problem that must be addressed: the listed respondent is not a proper respondent.


The rules governing relief under 28 U.S.C. § 2254 require a person in custody pursuant to the judgment of a state court to name the "state officer who has custody" of him as the respondent. See Rule 2(a) of the Rules Governing Habeas Corpus Cases Under Section § 2254; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996). This person typically is the warden of the facility in which the petitioner is incarcerated. See Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Failure to name the petitioner's custodian as a respondent deprives the federal court of personal jurisdiction. See id. The State is not a proper respondent. Morehead v. State of California, 339 F.2d 170, 171 (9th Cir. 1964). The jurisdictional defect is curable, however.

The court now grants Peterson leave to file an amendment to his petition to name a proper respondent, such as the warden of the prison at which he is housed. The amendment need not

1 be a long document and may be as simple as a one-page document that lists the case caption and
2 number for this case and states "I hereby substitute _____ in place of 'People Of The State Of
3 California' as the respondent in this action." Peterson must put the name of the warden for his
4 prison in place of the blank line, and must sign and date the amendment before filing it with the
5 court. The amendment must be filed no later than **July 29, 2011**. Failure to file the amendment
6 by the deadline will result in the dismissal of this action.

7 IT IS SO ORDERED.

8 DATED: June 20, 2011



SUSAN ILLSTON
United States District Judge